

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Jerome Ross,	)	CASE NO. 1:10 CV 1185
	)	
Petitioner,	)	JUDGE PATRICIA A. GAUGHAN
	)	
vs.	)	
	)	
Michele Miller, Warden,	)	<u>Memorandum of Opinion and Order</u>
	)	
Respondent.	)	

**Introduction**

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Greg White (Doc. 12) which recommends denial of the Petition for Writ of Habeas Corpus pending before the Court. Petitioner has failed to file objections to the Report and Recommendation. For the following reasons, the Report and Recommendation is ACCEPTED.

**Standard of Review**

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or

recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.” When no objections have been filed this Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See* Advisory Committee Notes 1983 Addition to Federal Rule of Civil Procedure 72.

### **Discussion**

Petitioner was sentenced to five years in prison following his conviction after a bench trial on two counts of rape. Petitioner raises three grounds for relief. Ground One asserts that the waiver of jury trial was not knowingly and intelligently made. Ground Two asserts that he was deprived of a fair trial due to ineffective assistance of counsel. Ground Three asserts that his conviction was against the manifest weight of the evidence.

The Magistrate Judge concluded that upon review of the trial court transcript, petitioner’s waiver of his jury trial was voluntary as well as knowing and intelligent, and the state appellate court’s decision on this claim was neither contrary to, nor involved an unreasonable application of, clearly established federal law. Nor did the Magistrate Judge find that the state appellate court’s decision with regard to petitioner’s ineffective assistance of counsel claim was deficient in that respect. Finally, with regard to petitioner’s manifest weight of the evidence claim, the Magistrate Judge conducted his own independent review of the trial transcript and concluded that the victim’s testimony alone was sufficient to uphold his conviction.

The Court has reviewed the Report and Recommendation and is satisfied that there is no clear error.

**Conclusion**

This Court agrees with the reasoning and conclusions of the Magistrate Judge and, having found no clear error, completely adopts his factual and legal conclusions as its own and incorporates them herein by reference. Accordingly, for the reasons set forth in the Magistrate Judge's Report and Recommendation, the Petition for Writ of Habeas Corpus is denied. Furthermore, the Court declines to issue a certificate of appealability. 28 U.S.C. § 2253(c).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan  
PATRICIA A. GAUGHAN  
United States District Judge

Dated: 6/7/11